IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 15TH DECEMBER 2006 / 24TH AGRAHAYANA 1928

WP(C).No. 29533 of 2006(N)

AGAINST THE ORDER IN IA 623 2006 IN
OS.196/2005 of MUNSIFF COURT, KALPETTA

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PETITIONER:

BEEFATHIMA @ BEEPATHU, AGED 39 YEARS,
D/O.BEERAN, AMBALAM HOUSE, VENGAPPALLY POST,
PINANGODE, KALPETTA VIA., VYTHIRIT TALUK,
WAYANAD DISTRICT. REP. BY POWER OF ATTORNEY HOLDER
BEERAN, S/O.MOIDEEN, VENGAPPALLY POST, PINANGODE,
KALPETTA VIA.,VYTHIRI TALUK, WAYANAD DISTRICT.

BY ADV. SRI.S.M.PRASANTH

RESPONDENTS:

VENGAPPALLY GRAMA PANCHAYATH,
REPRESENTED BY SECRETARY, VENGAPPALLY POST,
VYTHIRI TALUK, WAYANAD DISTRICT.

BY ADV. SRI.MANOJ RAMASWAMY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 15/12/2006, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX:

EXT.P1: COPY OF PLAINT IN OS 196/05 FILED BEFORE MUNSIFF'S COURT, KALPETTA

EXT.P2: COPY OF AFFIDAVIT FILED ALONG WITH ABOVE I.A.623/06

EXT.P3: COPY OF ORDER IN IA 623/06 OF MUNSIFF'S COURT, KALPETTA

EXT.P4: COPY OF WRITTEN STATEMENT FILED BY DEFENDANT

//True copy//

PA TO JUDGE.

M.SASIDHARAN NAMBIAR,J.

W.P.(C) .NO.29533 OF 2006

Dated 15th December 2006

JUDGMENT

Petitioner is plaintiff in O.S.196/05 on the file of Munsiff court, Kalpatta. Suit is one for permanent prohibitory injunction restraining respondent panchayat from trespassing into the plaint schedule property and reducing the same into their unlawful possession. As per Ext.P3 order an application filed under Order VI Rule 17 of the Code of Civil Procedure to amend the plaint was dismissed. It is challenged in this petition filed under Article 227 of Constitution of India.

2. In Ext.P3 order permission to amend the plaint was refused on the ground that new prayer (a) changes the nature of the suit and other prayers will be examined as the issues were already settled.

3. Relief (a) sought to be introduced by Ext.P2 amendment application was "declaring that plaintiff is the absolute owner of plaint schedule property." Other reliefs are for a mandatory injunction to remove the

portion of building situated in plaint schedule property and consequential amendment on valuation portion.

4. By amending the plaint introducing a relief for declaration of title as sought for the nature of the suit will not be changed. In such circumstance, refusal of amendment sought for in Ext.P3 order is not sustainable. Even according to learned Munsiff, even without the pleading other questions sought to be raised by petitioners are to be considered in the suit. In such circumstance, learned Munsiff should have allowed the application sought for by petitioner.

5. Writ petition is allowed. Ext.P3 order is quashed. Petitioner is permitted to amend the plaint as sought for in I.A.623/06. Respondent is entitled to file additional written statement.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.